

Order

**Michigan Supreme Court
Lansing, Michigan**

June 14, 2019

Bridget M. McCormack,
Chief Justice

158300 & (44)

David F. Viviano,
Chief Justice Pro Tem

KEITH SMITH,
Plaintiff-Appellee/Cross-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 158300
COA: 337708
Wayne CC: 15-001269-NO

CITY OF DETROIT,
Defendant/Cross-Plaintiff,

and

MERLO CONSTRUCTION COMPANY, INC.,
Defendant/Cross-Defendant-
Appellant/Cross-Appellee,

and

RAUHORN ELECTRIC, INC.,
Defendant/Cross-Defendant/
Cross-Plaintiff,

and

PARSONS BRINCKERHOFF MICHIGAN, INC.,
and POCO, INC.,
Defendants/Cross-Defendants.

On order of the Court, the application for leave to appeal the July 24, 2018 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered. We direct the Clerk to schedule oral argument on the application for leave to appeal as cross-appellant. MCR 7.305(H)(1).

The plaintiff cross-appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the defendant cross-appellee maintained possession and control over the sidewalk such that plaintiff's claim sounded in premises liability rather than ordinary negligence. Compare *Orel v Uni-Rak Sales Co Inc*, 454 Mich 564

(1997), and *Finazzo v Fire Equip Co*, 323 Mich App 620 (2018), with *Fraim v City Sewer of Flint*, 474 Mich 1101 (2006). In addition to the brief, the plaintiff shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The defendant shall file a supplemental brief within 21 days of being served with the plaintiff's brief. The defendant shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the plaintiff. A reply, if any, must be filed by the plaintiff within 14 days of being served with the defendant's brief. The parties should not submit mere restatements of their application papers.

The Michigan Association for Justice, Michigan Defense Trial Counsel, Inc., and the Negligence Section of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

The application for leave to appeal remains pending.



a0611

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 14, 2019

Clerk